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Nos. 08-295 & 08-307

IN THE
Supreme Court of the United States

THE TRAVELERS INDEMNITY COMPANY, *et al.*,

Petitioners,

-and-

COMMON LAW SETTLEMENT COUNSEL,

Petitioners,

v.

PEARLIE BAILEY, *et al.*,

Respondents.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR RESPONDENT CHUBB INDEMNITY INSURANCE COMPANY

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QUESTIONS PRESENTED

1. Whether bankruptcy courts have the statutory authority to enjoin state-law claims against a non-debtor that (a) do not arise from the non-debtor's derivative liability for the conduct of or claims against the debtor, but instead from an independent legal duty owed by the non-debtor to the plaintiffs; and (b) will have no effect on the bankruptcy estate.

2. Whether the Court of Appeals erred in directing the bankruptcy court to examine state law to ascertain the nature and elements of the state-law claims at issue in order to determine whether, as a matter of federal law, the claims may be enjoined.

3. Whether the Court of Appeals improperly entertained a collateral attack on the bankruptcy court's 1986 orders when it held that "the bankruptcy court had jurisdiction and authority to enter the 1986 orders," but "erred by subsequently interpreting those orders without reference to" the limitations on the bankruptcy court's power.

RULE 29.6 DISCLOSURE

Chubb Indemnity Insurance Company is a wholly-owned subsidiary of Federal Insurance Company, which in turn is a wholly owned subsidiary of The Chubb Corporation, which is publicly held. No publicly held company otherwise directly or indirectly owns 10% or more of Chubb Indemnity Insurance Company.

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STATEMENT OF THE CASE

Bankruptcy is about debtors. Its purpose is to address competing claims to a debtor's assets through the exercise of *in rem* jurisdiction over those assets, and, where appropriate, to grant the debtor a discharge of preexisting debt. Bankruptcy does not as a rule affect claims against non-debtors. This case thus presents a question about the outer boundaries of bankruptcy court power: the extent to which bankruptcy courts may grant permanent non-consensual releases of claims against non-debtors who have not submitted themselves or their assets to the rigors of bankruptcy and whose creditors do not receive the protections prescribed by the Bankruptcy Code.

As this Court has repeatedly explained, the central purpose of bankruptcy law is "to place the property of the bankrupt, wherever found, under the control of the court, for equal distribution among creditors." *Straton* v. *New*, 283 U.S. 318, 320-321 (1931). The bankruptcy court's *in rem* control over all of the debtor's property is, at bottom, the source of its authority to discharge the debtor of its pre-bankruptcy debts. *See Tennessee Student Assistance Corp.* v. *Hood*, 541 U.S. 440, 447 (2004). Only the necessity of dividing a limited fund among competing claimants, and the debtor's agreement to relinquish control over its property for that purpose, can justify permanently barring creditors from asserting their pre-bankruptcy claims against the debtor. The very nature and purposes of bankruptcy thus dictate that to the extent bankruptcy courts have the authority to grant such a permanent bar of claims against *non-debtors*, that authority can be exercised only when necessary to effectuate the Bankruptcy Code's specific provisions de-

signed to preserve the debtor's estate and allocate it equitably among competing claimants.

Even courts that have taken the most permissive view of the power to enjoin claims against non-debtors have thus recognized that its use can be justified only in extraordinary cases—where assertion of such claims would burden the debtor or threaten to deplete the estate. That is so only when claimants seek to hold the non-debtor derivatively liable for the debtor's acts or omissions. By definition, the threat to the bankruptcy estate that might justify a non-debtor release cannot exist when the non-debtor is sued for its own independent tortious conduct. But that is precisely what Travelers seeks in this case. The Court of Appeals properly rejected that unprecedented expansion of bankruptcy court authority.

Rather than address that holding, Travelers distorts it, setting up and knocking down three erroneous straw-man arguments. *First*, Travelers argues that the Court of Appeals held that bankruptcy jurisdiction is solely *in rem*. *Second*, Travelers argues that the Court of Appeals held that state law trumps federal bankruptcy law in determining the proper scope of a non-debtor injunction. *Third*, Travelers argues that the Court of Appeals permitted a collateral attack on a decades-old judgment. Each of these assertions is demonstrably untrue. The Court of Appeals simply applied established principles to reject Travelers' request that it receive absolution for its own independent torts through Johns-Manville's bankruptcy. The Court of Appeals' judgment should be affirmed.

I. THE JOHNS-MANVILLE BANKRUPTCY AND THE 1986 INJUNCTIONS

Johns-Manville Corporation ("Manville") was for decades the country's leading manufacturer of asbestos-containing products and raw asbestos supplier. As a result, it faced a deluge of personal-injury and property-damage claims that led it to file for bankruptcy in 1982. Pet. App. 7a.

Maximizing the value of Manville's estate by preserving its "going-concern" value presented novel challenges. Because of the long latency period of asbestos-related diseases, many people who were exposed to Manville products were expected to manifest disease only after—potentially long after—confirmation of the Manville plan. Without addressing such "future claims," Manville's reorganization would have been doomed to failure. 11 U.S.C. § 1141(d)(1)(A), however, contemplates the discharge of a Chapter 11 debtor only for debts arising prior to the plan's confirmation date. And even if such "future claims" could be addressed under the Code, there remained the issue of how to provide notice to individuals currently unaware that they faced future illness.

The parties and the bankruptcy court devised a novel solution to this problem. The plan that was ultimately confirmed provided for the creation of a trust for payment of asbestos-related claims (the "Manville Trust"), to be funded with, among other assets, 80% of the common stock of reorganized Manville. Pet. App. 215a. To supplement the discharge provided by the Bankruptcy Code, the bankruptcy court entered an injunction barring the assertion of present and future asbestos-related claims against reorganized Manville and channeling

those claims to the Manville Trust. *Id.* 9a. To justify binding future claimants in this fashion, the court appointed a future claimants' representative to safeguard their interests.

The plan of reorganization and associated injunctions also fashioned unusual and novel protections for Manville's insurers. When Manville filed for bankruptcy, it was engaged in litigation with several of its insurers—including Petitioner Travelers Indemnity Company,[1] Manville's primary liability insurer from 1947 to 1976—over the scope of its insurance coverage. Pet. App. 8a-9a. In addition, certain asbestos plaintiffs had brought suit directly against Travelers and other Manville insurers seeking to recover from the proceeds of the Manville insurance policies for injury arising from exposure to Manville asbestos. *Id.* 133a-134a. Because Manville's liability insurance policies were among the most significant estate assets, resolving the insurance coverage dispute was a central part of the bankruptcy case. *Id.* 8a. Ultimately, Manville reached settlements with its insurers under which the insurers agreed to pay a total of about $770 million. *Id.* Of that amount, Travelers paid about $80 million. *Id.* 9a.

As part of the insurance settlement, the bankruptcy court entered an injunction barring the assertion against settling insurers of "Policy Claims," defined as "any and all claims ... (whether or not presently known) which have been, or could have been, or might be asserted by

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[1] Except where the context otherwise requires, references to "Travelers" are to Travelers Indemnity Company and its affiliates as they existed in 1986.

any Person against any or all members of the [Johns-Manville] Group or against any or all members of the Settling Insurer Group based upon, arising out of or relating to the Policies" issued by the settling insurers. Pet. App. 301a-302a. Instead, Policy Claims were channeled to the insurance Settlement Fund, which was then deposited into the Manville Trust pursuant to the Confirmation Order. *Id.* 308a-309a.

The scope of the injunction in favor of the insurers was a subject of considerable contention in the bankruptcy court. Opposing approval of the insurance settlement agreement, the Committee of Asbestos Related Litigants expressed concern that the proposed definition of Policy Claims "would not be limited to asbestos-related claims or even to claims related to policy proceeds," but could also bar claims involving "the Settling Insurers' own tortious and bad-faith misconduct in refusing to defend, settle and pay claims." 2d Cir. App. A-578-579.

In response, Manville expressly disclaimed any intention to cut off such claims in a March 1985 memorandum urging the bankruptcy court to approve Manville's settlement with Travelers: "By releasing its Insurers, Manville seeks only to uphold the most basic bankruptcy power—the power to enjoin third parties from enforcing their claims against property of the debtor itself once the property has been reduced to a cash fund and those claims have been channeled or transferred to that fund." Respondent's Joint Appendix ("Resp. JA") 1a-2a. Manville emphasized that, while the settlement agreement would bar lawsuits "derivative of Manville's rights under the policies," claims based on an insurer's own tortious conduct having "nothing to do

with the insurers' contractual liability to Manville" would remain unaffected. *Id.* 2a. Manville reiterated the point later in its memo:

> Manville does not seek to have this Court release its Settling Insurers from any claims by third parties based on the Insurer's own tortious misconduct towards the third party, as opposed to its misconduct towards Manville. Manville seeks only to release the Settling Insurers from the rights Manville might itself have had against them or rights derivative of Manville's rights under the policies being compromised and settled.

Id. 5a.

Ultimately, the parties resolved their dispute through a June 3, 1985 letter agreement "clarif[ying] the intent of the parties" to the insurance settlement agreement as to the intended scope of the insurance injunction. *Id.* 11a. The proponents of the settlement—including Travelers—agreed that:

> The Court has *in rem* jurisdiction over the Policies and thus the power to enter appropriate orders to protect that jurisdiction. The channeling order is intended only to channel claims against the *res* to the Settlement Fund and the injunction is intended only to restrain claims against the *res* (i.e., the Policies) which are or may be asserted against the Settling Insurers.

Id. 13a-14a. Travelers expressly confirmed that it shared that understanding, stating at the end of the letter: "The foregoing is confirmed on behalf of The Travelers

Indemnity Company on behalf of itself and each of its Affiliates." *Id.* 14a.

In December 1986, the bankruptcy court entered orders approving the insurance settlements, confirming the plan of reorganization, and entering the associated injunctions. Pet. App. 42a.

II. THE COURT OF APPEALS' 1988 RULING UPHOLDING THE INSURANCE INJUNCTION

In 1988, the Court of Appeals affirmed the order confirming the Manville plan. *See Kane* v. *Johns-Manville Corp.*, 843 F.2d 636 (2d Cir. 1988). Separately, it upheld the validity of the injunction barring the assertion of Policy Claims against Manville's insurers—having construed the injunction as barring claims that "seek to collect out of the proceeds of Manville's insurance policies on the basis of Manville's conduct." *MacArthur Co.* v. *Johns-Manville Corp.*, 837 F.2d 89, 92-93 (2d Cir. 1988) (Pet. App. 188a).

MacArthur Corporation, a Manville asbestos distributor, claimed to be a co-insured under the insurance policies involved in the settlement, pursuant to "vendor endorsements" in the policies entitling distributors to insurance coverage for claims arising from their sale of Manville products. Pet. App. 192a. MacArthur argued that the bankruptcy court lacked the authority to bar it from suing Manville's insurers to recover under those policies. *Id.* 193a. The Court of Appeals held that because MacArthur's rights were completely derivative of Manville's rights, and permitting MacArthur to assert claims against the insurance policies would deplete the assets of the bankruptcy estate, enjoining such claims

was within the bankruptcy court's power. *Id.* 197a-199a.

As the Court of Appeals explained, "Manville's insurance policies and their proceeds [are] 'substantial property of the Manville estate which will be diminished if and to the extent that third party direct actions against the insurance carriers result in plaintiffs' judgments.'" Pet. App. 196a. Applying that principle to MacArthur's claims, the court rejected MacArthur's argument that its interests were "separate and distinct" from Manville's rights under the policies. *Id.* 197a. Rather, the court held that:

> The vendor endorsements cover only those liabilities arising from the vendor's status as a distributor of Manville's products. The endorsements are limited by the product liability limits of the underlying Manville policies.... *MacArthur's rights as an insured vendor are completely derivative of Manville's rights as the primary insured.* Such derivative rights are no different in this respect from those of the asbestos victims who have already been barred from asserting direct actions against the insurers.... *[I]n both instances, third parties seek to collect out of the proceeds of Manville's insurance policies on the basis of Manville's conduct. In both cases, plaintiffs' claims are inseparable from Manville's own insurance coverage and are consequently well within the Bankruptcy Court's jurisdiction over Manville's assets*.

Id. 197a-198a (emphasis added).

The Court of Appeals reasoned that the bankruptcy court had the power to enjoin such claims as a corollary to the power expressly granted to it under the Bankruptcy Code to approve the sale of property of the debtor's estate "free and clear of any interest in such property of an entity other than the estate." Pet. App. 199a (citing 11 U.S.C. § 363(f)). A bankruptcy court may approve such a sale as long as the third party's claim is in *bona fide* dispute and its claim to the estate property is channeled to the proceeds of the sale. *Id.* Moreover, pursuant to Section 105(a) of the Bankruptcy Code, a bankruptcy court may "issue any order, process or judgment that is necessary or appropriate to carry out the provisions of this title"—in this case, the bankruptcy court's authority to channel claims to estate property. *Id.* 200a (quoting 11 U.S.C. § 105(a)).

Although the insurance settlement was not precisely the same as the traditional sale of property of the estate free and clear of third-party claims, the *MacArthur* court recognized that the settlement could be analogized to a sale of the policies back to the insurer. In both cases, "the underlying principle of preserving the debtor's estate for the creditors and funneling claims to one proceeding in the bankruptcy court remains the same." Pet. App. 201a. Accordingly, the court held, the bankruptcy court's established power to preserve the *res* and adjudicate competing claims to the *res*—including the insurance policies and settlement proceeds—extended to enjoining claims that sought to recover out of the policy proceeds. *Id.*

III. THE 1994 MANVILLE AMENDMENTS TO THE BANKRUPTCY CODE

Placing the bulk of Manville's stock in the Manville Trust was intended to harness Manville's going-concern value to create an "evergreen" source of funding to pay asbestos claimants into the future. Pet. App. 215a-216a. As Senator Heflin later described it: "In essence, the reorganized company becomes the goose that lays the golden egg by remaining a viable operation and maximizing the trust's assets to pay claims." 140 Cong. Rec. S4521-01, S4523 (daily ed. Apr. 20, 1994). Reorganized Manville's stock price remained depressed, however, due to market concerns that the channeling injunction remained vulnerable to challenge. *See* H.R. Rep. No. 103-835 at 40 (1994), *reprinted in* 1994 U.S.C.C.A.N. 3340, 3349.

Accordingly, in 1994 Congress enacted the "Manville Amendments," Sections 524(g) and 524(h) of the Bankruptcy Code. Section 524(h) approved the result in *Johns-Manville*. Section 524(g) expressly authorized using the Manville approach in future asbestos-related bankruptcies.

Because it enjoins the claims and limits the recovery of absent future claimants, a Section 524(g) channeling injunction is an extraordinary remedy. Its eligibility requirements are therefore strict: it is available only where a debtor "is likely to be subject to substantial future demands" that, absent an injunction, would threaten the ability "to deal equitably" with present and future claims. 11 U.S.C. § 524(g)(2)(B)(ii). For similar reasons, debtors may invoke Section 524(g) only if their plans meet "explicit requirements simulating those met in the Manville case." H.R. Rep. No. 103-835 at 41.

Among other things, the trust must be able to obtain a majority of the voting shares of the reorganized debtor, and the court must appoint a representative for the future claimants. 11 U.S.C. § 524(g)(2)(B).[2]

Prior to the enactment of Section 524(g), the Bankruptcy Code provided no express authority to enjoin claims against non-debtors. Section 524(g) codified this novel feature of the Manville bankruptcy as well, providing that where the statute's other requirements are met, the bankruptcy court may in certain narrow circumstances provide injunctive relief for non-debtors. This authority, however, was strictly circumscribed: such an injunction may bar only "action[s] directed against a third party who ... is alleged to be directly or indirectly liable for the conduct of, claims against, or demands on the debtor to the extent such alleged liability of such third party arises by reason of" one of four specified relationships with the debtor, including "the third party's provision of insurance to the debtor or a related party." 11 U.S.C. § 524(g)(4)(A)(ii).

Section 524(g) thus does not permit bankruptcy courts to bar any and all actions against a debtor's insurer, but only those suits seeking to hold the insurer directly or indirectly liable for the conduct of or claims against the debtor and that arise by reason of the insurer's provision of insurance to the debtor. In short, and unsurprisingly, Section 524(g) mirrors the reasoning of

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[2] Consistent with ordinary principles of finality, the statute provides that once the order confirming the plan of reorganization has been issued or affirmed by the district court and has become final, "the injunction shall be valid and enforceable and may not be revoked or modified by any court." 11 U.S.C. § 524(g)(3)(A)(i).

the Court of Appeals in upholding the original Manville insurance injunction in *MacArthur*, permitting a plan of reorganization to bar claims against non-debtor insurers only to the extent such claims seek to recover on account of the debtor's conduct and would thus risk reducing the debtor's insurance and depleting the estate.

IV. THE INDEPENDENT ACTIONS AGAINST TRAVELERS AND OTHER INSURERS

Beginning in 2001, asbestos plaintiffs' counsel developed new theories of liability for asbestos-related injuries. They began suing dozens of insurers, alleging, among other things, that the insurers had violated a purported duty to warn potential victims of the dangers of asbestos exposure. Although the parties and courts below referred to these lawsuits as "Direct Actions," that terminology is misleading. The suits are not traditional "direct action" suits, like those the Court of Appeals addressed in *MacArthur*, where a claimant sues an insurer directly to recover insurance proceeds allegedly due on account of an insured's tortious conduct. Pet. App. 5a n.4, 197a-199a. These new lawsuits (for clarity, referred to here as "Independent Actions") instead allege liability for insurers' own tortious misconduct—not that of any insured—and seek to recover from the insurers without regard to the terms or limits of any insurance policies.

The Independent Actions come in two basic forms, "Statutory Actions" and "Common-Law Actions." Statutory Actions are brought pursuant to state consumer-protection statutes. In essence, they assert that insurers conspired with one another and with their insureds to raise "fraudulent" defenses to asbestos-related personal-injury claims, which in turn led to the plaintiffs either

settling their claims too cheaply or being dissuaded from filing suit at all.

Travelers (Br. 17) identifies the *Wise* complaint, filed in West Virginia, as a "typical" Statutory Action. Notably, the *Wise* plaintiffs were not disappointed *Manville* claimants. Instead, they sought to represent a class consisting of claimants against three *other* asbestos defendants. 2d Cir. App. A-443-444. While the *Wise* complaint alleges that Travelers obtained knowledge of the hazards of asbestos in part from its relationship with Manville, the complaint does not seek to hold Travelers or any other defendant liable on account of its status as a Manville insurer. Rather, the complaint alleges that the insurer defendants breached independent legal duties to the plaintiffs by disseminating deceptive and misleading information in the course of their defense of other insureds. *See* Pet. App. 24a-25a.

The Common-Law Actions generally contend that insurers either failed to warn workers and the public about the hazards of asbestos, or conspired to suppress knowledge of those hazards, resulting in harm to the plaintiffs. They assert common-law theories of negligence, strict liability, breach of express and implied warranties, and fraudulent misrepresentation, among others. Pet App. 11a; *see, e.g.,* Compl., *Gilchrist* v. *American Std., Inc.* (Ohio Ct. Common Pleas No. 03-508628) (2d Cir. App. A-1443-1543). Again, while the complaints may allege that Travelers gained knowledge of the dangers of asbestos in part from its relationship with Manville, they do not seek to recover from the insurers on account of Manville's actions. Pet. App. 29a. Rather, the gravamen of the complaints is that the insurer defendants purportedly had a duty, independent of their rela-

tionship with any particular insured, to warn the public of the dangers of asbestos. *Id.*[3]

V. TRAVELERS' MOTION TO ENJOIN THE INDEPENDENT ACTIONS AND THE RESULTING SETTLEMENTS WITH THE PLAINTIFFS

In June 2002, Travelers moved the bankruptcy court to enjoin the Independent Actions, claiming that such lawsuits violated the 1986 confirmation order and the insurance injunction, which barred the assertion of Policy Claims—claims "based upon, arising out of or relating to" Manville's insurance policies—against settling Manville insurers. In contending that the Independent Actions asserted Policy Claims, Travelers pointed to the complaints' allegations that Travelers learned of the dangers of asbestos in part through its relationship with Manville.

The plaintiffs, unsurprisingly, contended that their lawsuits were not barred by the injunctions. But so did counsel for the beneficiaries of the Manville Trust, who disputed that the Independent Actions alleged prohibited "Policy Claims," pointing out that "[n]one of the instant lawsuits names Manville or the Manville Trust as a defendant; none of them sues Travelers for alleged misconduct in handling claims under Manville Policies; and

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[3] As the Court of Appeals noted (Pet. App. 25a n.21), no court has ever accepted these theories. Indeed, during the pendency of this appeal, the Ohio Court of Appeals rejected the Common-Law Action claimants' theories in *Bugg* v. *American Standard, Inc.*, 2005 WL 1245043 (Ohio Ct. App. May 26, 2005). As a result, all of the remaining Ohio Common-Law Actions, including the *Gilchrist* action, were dismissed.

none of them sues Travelers in its capacity as a Manville insurer." 2d Cir. App. A-721. Counsel also noted that if such claims did fall within the terms of the 1986 injunction, they would necessarily be channeled to the Manville Trust for payment, detrimentally affecting legitimate beneficiaries of the Trust. *Id.* A-728-730.

Without ruling on Travelers' motion, the bankruptcy court temporarily enjoined the Independent Actions and sent the parties to mediation. Pet. App. 12a, 103a. In 2004, Travelers entered into separate settlement agreements with the Statutory Action plaintiffs (Resp. JA 15a-39a), the Common-Law Action plaintiffs (*id.* 40a-60a), and a group of plaintiffs in Hawaii who were asserting liability arising solely from Travelers' handling of claims against a non-Manville insured, Combustion Engineering (*id.* 61a-81a). Under the settlement agreements, Travelers agreed to pay the claimants nearly $500 million, conditioned upon the entry of an order by the bankruptcy court "clarify[ing]" that the Independent Actions were and had always been prohibited by the 1986 injunctions.[4] *Id.* 23a, 48a, 69a. In addition to enjoining present claimants before the court—all of whom had already agreed to dismiss their pending suits and release their claims—the order Travelers sought would bar all *future* Independent Actions by parties not before the court.

The parties then moved the bankruptcy court to approve the various settlement agreements. The bankrupt-

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[4] The Independent Actions, however, would not be channeled to the Manville Trust, but instead to three new settlement funds to be created from the $500 million. Pet. App. 149a-152a.

cy court scheduled a hearing on the motions to approve settlements, and approved forms of settlement notice to be sent to potential Independent Action claimants. Resp. JA 82a-101a.

At this point, Chubb became a party to the proceedings. Chubb never insured Manville, and had not previously been a party to any proceedings in the Manville bankruptcy. But as a co-defendant with Travelers in certain Common-Law Actions, Chubb would be enjoined under the proposed Common-Law Action settlement from bringing potential contribution and indemnity claims against Travelers in the event Chubb were held liable on claims for which Travelers shared liability. Chubb accordingly filed a limited objection to the proposed Common-Law Action settlement.

In August 2004, after a hearing, the bankruptcy court approved the settlements. Pet. App. 187a. Adopting nearly verbatim the Travelers-drafted findings of fact and conclusions of law, the bankruptcy court reasoned that "the evidence ... establishes that the direct action claims against Travelers are inextricably intertwined with Travelers[']' long relationship as Manville's insurer." *Id.* 169a. Relying on that premise, the bankruptcy court "clarifie[d]" that all present and future Independent Actions "are—and always have been—permanently barred" by the 1986 injunctions.[5] *Id.* 170a. The bankruptcy court further held that all contribution or

[5] In light of its ruling, the Second Circuit found it unnecessary to address the bankruptcy court's problematic approval of a settlement bestowing an enormous reward upon parties premised upon their agreement to stop doing that which the bankruptcy court had just found to be a violation of its prior orders.

indemnity claims against Travelers in connection with the Independent Actions were likewise barred. *Id.* 93a-95a. Indeed, the bankruptcy court declared that all future claims "against Travelers that directly or indirectly are based upon, arise out of or relate to Travelers[']s insurance relationship with Manville or Travelers[']s knowledge or alleged knowledge concerning the hazards of asbestos" were barred. *Id.* 95a.[6]

In addition, the bankruptcy court entered a "gatekeeping" provision requiring any plaintiff wishing to bring a suit against Travelers in state court "arising out of any policy of insurance provided by Travelers to a policyholder *other than Manville*" first to seek leave from the bankruptcy court. Pet. App. 97a (emphasis added). Plaintiffs were required to represent "that no allegations will be made [or] evidence ... introduced relating to exposure to Manville asbestos, Travelers[']s defense of Manville or Travelers[']s knowledge or alleged knowledge concerning the hazards of asbestos directly or indirectly arising out of its insurance relationship with Manville." *Id.* Plaintiffs would be permitted to proceed with their lawsuits only after obtaining an order "that the proposed ... action is not covered by" the 1986 injunction (as "clarified" in 2004). *Id.*

The district court largely affirmed the bankruptcy court's 2004 order approving the settlement agreements, but it vacated the "gatekeeper" provision as beyond the bankruptcy court's power, reasoning that "the Bankrupt-

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[6] The bankruptcy court also extended the protection of the injunctions for the first time to post-1986 affiliates of Travelers such as Citigroup.

cy Court has no jurisdiction to screen, in the first instance, suits against a non-debtor that purport to assert claims unrelated to the debtor or the estate." Pet. App. 181a.

VI. THE COURT OF APPEALS' DECISION

The Court of Appeals vacated the district court's order. It "conclude[d] that the bankruptcy court erred insofar as it enjoined suits that, as a matter of state law, are predicated upon an independent duty owed by Travelers to the [plaintiffs], that do not claim against the *res* of the Manville estate, and that seek damages in excess of and unrelated to Manville's insurance policy proceeds." Pet. App. 6a. It accordingly remanded to the bankruptcy court for that court to determine whether, in light of the Court of Appeals' decision, it had the authority to enjoin any of the claims at issue. *Id.* 36a.

The Court of Appeals noted that "the bankruptcy court had continuing jurisdiction to interpret and enforce its own orders." Pet. App. 17a. It explained, however, that "while there is no doubt that the bankruptcy court had jurisdiction to clarify its prior orders, that clarification cannot be used as a predicate to enjoin claims over which it had no jurisdiction." *Id.* 18a. Accordingly, the Court of Appeals examined whether the bankruptcy court's "clarification" actually improperly expanded the scope of the 1986 injunctions to include claims that were beyond the bankruptcy court's power to bar.

In addressing that question, the Court of Appeals began with its 1988 decision in *MacArthur*. Pet. App. 21a-22a. The court explained that the bankruptcy court had the authority to enjoin MacArthur's claims because MacArthur's "rights as an insured vendor are completely

derivative of Manville's rights as the primary insured," and MacArthur sought "to collect out of the proceeds of Manville's insurance policies on the basis of Manville's conduct." *Id.* (quoting *MacArthur*, 197a-198a). In short, "MacArthur's coverage claim clearly affected" "a significant asset of the bankruptcy estate—Manville's insurance policies." *Id.* 21a.

The Court of Appeals explained that, for similar reasons, the 1986 injunction properly barred "direct actions" by plaintiffs seeking to recover from Manville's insurers for Manville's tortious conduct. Pet. App. 22a-23a (citing *In re Davis*, 730 F.2d 176 (5th Cir. 1984)). Such "direct actions," the court noted, do not create an independent cause of action against the insurer, but "merely grant[] a procedural right of action against the insurer where the plaintiff has a substantive cause of action against the insured." *Id.* 22a (citation omitted). Because such actions threatened to deplete the insurance coverage that was one of the Manville estate's most significant assets, the bankruptcy court had the power to enjoin them incident to its fundamental power to marshal estate assets and adjudicate competing claims to those assets. *See id.* 22a-23a.

The Court of Appeals explained, however, that "[t]he claims at issue in *MacArthur* and *Davis* differ significantly from the statutory and common law claims at issue here." Pet. App. 23a. Specifically:

> Travelers candidly admits that both the statutory and common law claims seek damages from Travelers that are *unrelated* to the policy proceeds, quite unlike the claims in *MacArthur* and *Davis* where plaintiffs sought indemnification or compensation for the tortious wrongs of

> Manville to be paid out of the proceeds of Manville's insurance policies. Moreover, the claims at issue here do not seek to collect on the basis of Manville's conduct. Instead, the Plaintiffs seek to recover directly from Travelers, a non-debtor insurer, for its own alleged misconduct.

Id. (citations omitted).

The Court of Appeals acknowledged that the bankruptcy court had found that the Independent Actions had a factual connection to the Travelers-Manville relationship, because Travelers obtained its knowledge about asbestos from its relationship with Manville. Pet. App. 23a. But, the court explained, in determining whether the bankruptcy court had the authority to enjoin the claims at issue, the pertinent question was whether the claims sought to recover for Manville's conduct, or sought to hold Travelers responsible for breach of an independent legal duty purportedly owed to the plaintiffs. *Id.* 24a. That question, the Court of Appeals noted, requires an examination of state law. *Id.* For example, the court noted that a West Virginia consumer-protection law permitted "a separate and independent recovery against [a] tortfeasor's insurer arising out of its alleged bad faith insurance practices," wholly distinct from any cause of action against the insured. *Id.* 24a-25a.

The Court of Appeals concluded that, insofar as the Independent Actions rested on such alleged independent state-law duties, and did not seek to hold Travelers liable for Manville's conduct or recover against the proceeds of the insurance policies or settlement, the bankruptcy court erred—as a matter of federal bankruptcy law—in extending the injunction to reach them. It recognized that injunctions in favor of non-debtors are

appropriate only in unusual circumstances: "[A] non-debtor release is a device that lends itself to abuse. By it, a nondebtor can shield itself from liability to third parties. In form, it is a release; in effect, it may operate as a bankruptcy discharge arranged without a filing and without the safeguards of the Code." Pet. App. 30a (quoting *In re Metromedia Fiber Network, Inc.*, 416 F.3d 136, 142 (2d Cir. 2005)). In light of this potential for abuse, and following the logic of *MacArthur* and *Davis*—which tethered the bankruptcy court's power to enjoin claims against non-debtors to its fundamental power to marshal estate assets and adjudicate competing claims to the estate—the Court of Appeals reasoned that, in this context, "a bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the *res* of the bankruptcy estate," here, the insurance policies and resulting insurance settlement proceeds. *Id.* 31a.

Accordingly, while the Court of Appeals expressly reaffirmed its holding in *MacArthur* affirming the 1986 insurance injunction, it declined to extend *MacArthur* to this very different situation: "Although the bankruptcy court had jurisdiction and authority to enter the 1986 orders barring claims 'based upon, arising out of, or related to the Policies,' it erred by subsequently interpreting those terms without reference to the court's jurisdictional limits." Pet. App. 31a. The Court of Appeals therefore vacated and remanded "for the bankruptcy court to examine whether, in light of this opinion, it had jurisdiction to enjoin any of the instant claims." *Id.* 36a.

SUMMARY OF ARGUMENT

I. This case concerns the limits of a bankruptcy court's power to enjoin claims asserted against a non-debtor. The Court of Appeals held that the bankruptcy court could not enjoin such claims where the non-debtor's alleged liability does not derive from the debtor's liability and the claims would have no effect on the bankruptcy estate.

That conclusion flows from well-established principles of bankruptcy law. The purpose of bankruptcy is to marshal the debtor's assets and to distribute them among creditors. Bankruptcy courts are able to bind all creditors because they exercise *in rem* jurisdiction over a limited fund—the bankruptcy estate. Bankruptcy courts lack such jurisdiction over the assets of non-debtors, who are not bound by the strictures of bankruptcy and whose creditors do not enjoy its protections. Accordingly, non-debtor injunctions are extraordinary relief, proper only when they are necessary to effectuate the specific provisions of the Bankruptcy Code governing creditor-debtor relations. As a long line of cases has made clear, it follows that bankruptcy courts may not enjoin claims against non-debtors when those claims do not derive from the debtor's liability and their assertion will not affect the bankruptcy estate. None of petitioners' contentions regarding the scope of bankruptcy jurisdiction or power calls that conclusion into doubt.

II. Travelers wrongly asserts that the Court of Appeals held, in derogation of the Supremacy Clause, that state law determines the limits of the bankruptcy court's authority to enjoin claims against a non-debtor. To the contrary, the Court of Appeals recognized that those limits are a question of federal law. At the same

time, in determining which state-law claims meet the federal-law standard, it is necessary to look to state law to ascertain the nature and elements of those claims. This Court has recognized, in cases stretching back over decades, that state law plays such a role in federal bankruptcy law. The Court of Appeals' ruling was a straightforward application of that settled principle.

III. Petitioners argue that respondents have raised an untimely "collateral attack" against the 1986 confirmation and insurance settlement orders and injunctions, and that the Court of Appeals' decision disregards principles of finality and upsets settled expectations. But respondents do not challenge any 1986 order; they instead oppose the bankruptcy court's 2004 order "clarifying"—in truth, rewriting—the scope of those injunctions. The Court of Appeals' decision was made on respondents' timely direct appeal from that 2004 order. Nor did the Court of Appeals "discard[] its own earlier affirmance of the Manville confirmation order," as Travelers claims (Br. 5). Rather, the Court of Appeals expressly reaffirmed its 1988 decision upholding the insurance injunction, but held that the bankruptcy court erred in expanding the injunction (in the guise of a "clarification") beyond established limits on the bankruptcy court's authority. That holding raises no legitimate finality concerns.

ARGUMENT

I. BANKRUPTCY COURTS LACK AUTHORITY TO ENJOIN CLAIMS AGAINST NON-DEBTOR THIRD PARTIES WHOSE LIABILITY IS INDEPENDENT OF THE DEBTOR'S

The Court of Appeals correctly held that the bankruptcy court lacked the authority to enjoin claims against Travelers for Travelers' own allegedly tortious conduct—claims that by definition could have no effect on the Manville estate. The fundamental purpose of bankruptcy is to exercise exclusive jurisdiction over the assets of the *debtor*, to resolve competing claims to those assets in a manner that binds all creditors (both present and absent), and, where appropriate, to discharge the debtor of pre-existing debts and enable it to obtain a fresh start. To that end, the Bankruptcy Code prescribes a detailed set of requirements to which debtors must adhere and a corresponding set of protections for creditors.

In extraordinary circumstances, courts have permitted the issuance of injunctions in favor of non-debtors in bankruptcy. Consistent with the fundamental purpose of bankruptcy, however, they have granted non-debtors this powerful protection only where their liability is linked to the debtor's and where assertion of claims against the non-debtor would thus threaten the ability to marshal the debtor's estate and apportion it equitably among creditors. The Court of Appeals' decision merely applied that basic principle, holding that Travelers was not entitled to an injunction that would immunize it from present and future liability for its own allegedly tortious conduct—liability wholly independent of Manville's. The assertion of such claims, by definition, can have no

effect on the bankruptcy estate, and enjoining them is thus outside the bankruptcy court's power.

Petitioners' arguments regarding the scope of the bankruptcy court's jurisdiction and authority provide no basis for questioning the Court of Appeals' holding. *First*, while it is true that bankruptcy courts' jurisdiction is not solely *in rem*, it does not follow that bankruptcy courts have authority to enjoin claims by third parties against non-debtors that have no effect on the *res*. *Second*, Travelers' contention that previous complex reorganizations could not have been achieved under the Court of Appeals' reasoning is demonstrably false: the Court of Appeals' decision is an entirely unremarkable application of the principles announced in the decisions approving those very reorganizations. *Finally*, under those same settled principles, whatever factual nexus may exist between the claims at issue and Travelers' insurance relationship with Manville is legally insufficient to justify the expansion of the injunction Travelers seeks.

A. The Fundamental Purpose Of Bankruptcy Is The Marshaling Of The Debtor's Estate And The Resolution Of Competing Claims To The Estate's Assets

Bankruptcy, at bottom, is about debtors, their property, and claims against that property. The question presented in this case is the extent of the bankruptcy court's power to enjoin claims that run not against debtors or their property but against non-debtors. That power lies at the outer limits of the bankruptcy courts' domain, and its scope must be defined by reference to the fundamental purposes and structure of bankruptcy law.

Bankruptcy's central purpose is to provide an orderly mechanism for addressing competing claims to the assets of a debtor who is unable to pay those claims in full. *See, e.g., Straton* 283 U.S. at 320-321 (the purpose of bankruptcy is "to place the property of the bankrupt, wherever found, under the control of the court, for equal distribution among creditors"); *see also United States* v. *Energy Res.*, 495 U.S. 545, 549 (1990) (the "traditional … authority" of bankruptcy courts is "to modify creditor-debtor relationships"); *Northern Pipeline Constr. Co.* v. *Marathon Pipe Line Co.*, 458 U.S. 50, 71 (1982) (plurality) (the "restructuring of debtor-creditor relations … is at the core of the federal bankruptcy power").

To accomplish the goals of bankruptcy, "[b]ankruptcy courts have exclusive jurisdiction over a debtor's property, wherever located, and over the estate." *Hood*, 541 U.S. at 447; *see* 28 U.S.C. § 1334(e). The bankruptcy court adjudicates creditors' claims to the estate and the estate is apportioned equitably among those creditors according to the priorities set forth in the Bankruptcy Code. *See* 11 U.S.C. §§ 502, 506, 507, 725, 726, 1129. At the conclusion of a bankruptcy case, a debtor that has satisfied the Code's requirements is discharged of liability for old debts and given a "fresh start." The discharge constitutes a statutory permanent injunction against the assertion of pre-bankruptcy claims or any attempt to collect on pre-bankruptcy obligations. Hence, the debtor's existing creditors—whether or not they asserted a claim or made an appearance in the bankruptcy—are bound by the discharge and thereafter barred from pursuing the debtor or its future earnings and assets. *See id.* §§ 524(a), 727(a)-(b), 1141(d); *Hood*, 541 U.S. at 447; *see also Central Va. Comm.*

Coll. v. *Katz*, 546 U.S. 356, 363-364 (2006) (exercise of exclusive jurisdiction over debtor's property, equitable distribution of that property among debtor's creditors, and debtor's discharge and "fresh start" are "[c]ritical features of every bankruptcy proceeding").

A debtor may receive a discharge only after subjecting itself to rigorous requirements. Consistent with the bankruptcy court's exercise of *in rem* jurisdiction over the property of the estate, a debtor must give creditors broad notice of the bankruptcy proceeding; file detailed schedules disclosing its assets and liabilities; subject its financial condition and business affairs to scrutiny by creditors, a trustee, or a court-appointed examiner; and submit its assets and business operations to the jurisdiction and oversight of the bankruptcy court. 11 U.S.C. §§ 342, 521, 541, 1103, 1104, 1106, 1107; Fed. R. Bankr. P. 2002, 2004.

By the same token, because all creditors will be bound by the bankruptcy court's disposition of the *res*, the Bankruptcy Code provides detailed substantive and procedural protections for creditors. In a Chapter 11 reorganization like Manville's, creditors are entitled to negotiate with the debtor over the terms of the plan of reorganization by which estate assets will be apportioned among creditors, and, if dissatisfied, may propose an alternative plan. 11 U.S.C. §§ 1103, 1121. Creditors also have the express right to be heard on any issue in a bankruptcy case and to object to a proposed plan of reorganization. *Id.* §§ 1109(b), 1128. Creditors who will receive less than full payment under a plan have the right to vote on whether to approve the plan, after full disclosure of its provisions. *Id.* §§ 1124, 1125, 1126. The bankruptcy court cannot confirm a plan unless a

majority of creditors whose claims are impaired vote to approve it, *id.* §§ 1126, 1129(a)(8), or at least one class of impaired claimants approves the plan and the court concludes that the plan "does not discriminate unfairly" and is "fair and equitable" as to the remaining impaired creditors. *Id.* § 1129(a)(10), (b). Only if these protections are observed and the court confirms a plan satisfying all of the Code's requirements (*id.* § 1129(a)-(b)) does the debtor obtain a discharge. *Id.* § 1141(d).

As the overall structure of the Bankruptcy Code confirms, "[b]ankruptcy jurisdiction, at its core, is *in rem*." *Katz*, 546 U.S. at 995. The central problem of bankruptcy is how to apportion a limited fund among competing claimants. Bankruptcy courts' power, accordingly, centers on that fund—the *res*. "A bankruptcy court's *in rem* jurisdiction permits it to determin[e] all claims that anyone … has to the property … in question. The proceeding is one against the world." *Hood*, 541 U.S. at 448 (citation and internal quotation marks omitted). The court "is able to provide the debtor a fresh start …, despite the lack of participation of all of his creditors, because the court's jurisdiction is premised on the debtor and his estate." *Id.* at 447. In short, a bankruptcy court's statutory authority to grant a debtor a discharge—a permanent injunction against the assertion of all pre-bankruptcy claims—is inextricably tied to the court's power over the debtor's property: the *res* of the bankruptcy estate.

B. Bankruptcy Courts Have The Power To Enjoin Claims Against Non-Debtors Only If Such Claims Would Deplete The Bankruptcy Estate Or Threaten The Debtor's Reorganization

The Bankruptcy Code does not contemplate the grant of a discharge to non-debtors. Indeed, even where a non-debtor is co-liable with the debtor on a debt, the Code makes clear that a discharge of the debtor "does not affect the liability of any other entity on ... such debt." 11 U.S.C. § 524(e). Nor (except in the specific provisions of Section 524(g)) does the Code grant any express authority to enjoin claims against non-debtors.

These limitations on the reach of the bankruptcy power are understandable in light of the essential purpose of bankruptcy: to adjust the relations between a debtor and its creditors. The bankruptcy court's *in rem* jurisdiction does not extend to property of non-debtors. And, because non-debtors have not filed for bankruptcy, they are not subject to the strictures—and their creditors do not enjoy the protections—of the Bankruptcy Code.

In certain exceptional cases beginning with the pioneering Manville case, however, courts have found that a permanent injunction in favor of a non-debtor was essential to the debtor's effort to reorganize and address the claims of its creditors. In these rare cases, certain courts have held it permissible to issue such an ancillary injunction to effectuate the bankruptcy court's statutory

authority to protect the debtor's estate and ensure the equitable distribution of its assets among its creditors.[7]

In *Johns-Manville* itself, as discussed above, *see supra* pp. 3-7, Manville's insurers settled their coverage dispute with Manville, paying $770 million into a settlement fund. As part of the settlement, the bankruptcy court enjoined suits against the settling insurers "based upon, arising out of, or related to" the insurance policies, and channeling those suits to the settlement proceeds. Pet. App. 193a. Because the Bankruptcy Code provided no express authority for such a non-debtor injunction, the bankruptcy court relied upon Section 105, which authorizes bankruptcy courts to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions" of the Code. 11 U.S.C. § 105(a).

The Court of Appeals upheld the injunction, holding that the bankruptcy court "properly issued the [injunction] pursuant to its equitable and statutory powers to dispose of the debtor's property free and clear of third-party interests and to channel those interests to the proceeds thereby created." Pet. App. 194a. As the Court of Appeals explained, "a bankruptcy court has ju-

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[7] Relying on Section 524(e), two courts of appeals have concluded that such injunctions are impermissible under any circumstances. *See In re Lowenschuss*, 67 F.3d 1394, 1401-1402 (9th Cir. 1995) ("[Section] 524(e) precludes the bankruptcy courts from discharging the liabilities of non-debtors," and "the specific provisions of section 524 displace the court's equitable powers under section 105"); *In re Western Real Estate Fund*, 922 F.2d 592, 601-602 (10th Cir. 1991) (per curiam) (Section 105 does not grant power to "relieve[] the nondebtor from its own liability to the creditor" "in violation of section 524(e)").

risdiction over all of the property of the debtor's estate." *Id.* "Manville's insurance policies and their proceeds were 'substantial property of the Manville estate which [would] be diminished if and to the extent that third party direct actions against the insurance carriers result in plaintiffs' judgments.'" *Id.* 196a (citation omitted). The Court of Appeals noted that the Bankruptcy Code provides express authority to approve the sale of estate property free and clear of third-party claims and to channel such claims to the proceeds of the sale. *Id.* 199a (citing 11 U.S.C. § 363(f)). And it found the settlement here analogous, reasoning that "[t]he injunctive orders issued by the Bankruptcy Court were necessary to effectuate the Court's channeling authority, that is, to make sure that claims to Manville's insurance proceeds were, in fact, channeled to the settlement fund." *Id.* The Court of Appeals thus approved the non-debtor injunction in favor of Manville's insurers only because the injunction was necessary to protect estate property—the insurance policies and proceeds—and ensure its equitable division among creditors.

Subsequent decisions have followed *Johns-Manville* in recognizing that non-debtor injunctions are extraordinary and permissible only when necessary to preserve the property of the estate and facilitate the equitable treatment of creditors. For example, in the bankruptcy of A.H. Robins Company—the manufacturer of the Dalkon Shield—the bankruptcy court enjoined suits by plaintiffs seeking to hold Robins' directors, attorneys, and insurer liable for Dalkon Shield injuries. *In re A.H. Robins Co.*, 880 F.2d 694, 700 (4th Cir. 1989). The Fourth Circuit upheld the injunction, reasoning that, if held liable, the non-debtors would have indemnity or

contribution claims against Robins, and that "the entire reorganization hinges on the debtor being free from indirect claims such as suits against parties who would have indemnity or contribution claims against the debtor." *Id.* at 701-702. Accordingly, the bankruptcy court had the power under Section 105 to require the plaintiffs, whose claims were afforded full payment in the plan from proceeds of the debtor's insurance policies, "to resort to the fund that will not defeat other creditors," rather than "interfer[ing] with the reorganization and thus with all the other creditors" by pursuing separate actions against the directors, attorneys, and insurers. *Id.*

Similarly, in the bankruptcy of Drexel Burnham Lambert, the court approved a settlement of class-action securities claims against the debtor that enjoined plaintiffs in the non-opt-out class from asserting claims against the debtor's directors and officers. As the district court there explained, the settlement injunction protected the "[d]ebtors' estates from piecemeal dismemberment through claims over [against the debtor] and other indemnity claims" by the directors and officers. *In re Drexel Burnham Lambert Group, Inc.*, 130 B.R. 910, 928 (S.D.N.Y. 1991), *aff'd*, 960 F.2d 285, 293 (2d Cir. 1992).

The Third Circuit has likewise held that Section 105 does not grant bankruptcy courts the power to enjoin third-party actions against non-debtors that would not give rise to indemnity claims or other claims against the estate that would threaten the debtor's reorganization. *See In re Continental Airlines*, 203 F.3d 203, 214-217 (3d Cir. 2000). The court thus reversed confirmation of a plan that permanently enjoined shareholder lawsuits against the debtor's directors and officers for allegedly

causing the debtor to issue false statements in violation of securities laws. *Id.* at 205. The court explained that in the absence of any "identity of interests" between the debtor and the non-debtors necessitating an injunction of such claims to ensure the success of the debtor's reorganization, the injunction "amounted to nothing more than a lockstep discharge of non-debtor liability and fall[s] squarely into the section 524(e) prohibition." *Id.* at 217.

More recently, in the bankruptcy of Dow Corning Corporation, the largest producer of silicone breast implants, the bankruptcy court barred plaintiffs from suing Dow's shareholders and settling insurers on account of personal-injury claims against Dow. *See In re Dow Corning Corp.*, 280 F.3d 648, 654-655 (6th Cir. 2002). Reviewing and synthesizing the previous caselaw, the Sixth Circuit concluded that bankruptcy courts have the power under Section 105 to enjoin a non-consenting creditor's claim against a non-debtor only in the most "unusual circumstances." *Id.* at 658 (citing *Johns-Manville*, *A.H. Robins*, and *Drexel*). Such an injunction, the Sixth Circuit held, is permissible only when seven factors are satisfied. Specifically, among other factors, there must be "an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate," and the injunction must be "essential to the reorganization" because the reorganization "hinges

on the debtor being free" from such indemnity or contribution claims. *Id.*[8]

The common thread in all these decisions is that a non-debtor injunction is permissible only when it is necessary to the debtor's reorganization because claims against the non-debtor would otherwise burden the debtor or threaten to diminish the debtor's estate. Under such circumstances, a non-debtor injunction may be authorized under Section 105 because the injunction is "necessary ... to carry out the provisions" of the Bankruptcy Code apportioning the debtor's assets equitably among creditors and granting the debtor a true discharge of existing debt.

That principle is also embodied in Section 524(g) of the Bankruptcy Code—the only provision that grants express authority to enjoin claims against non-debtors. As discussed above, *see supra* pp. 10-12, Congress modeled Section 524(g) after the Manville channeling injunction. Section 524(g) thus authorizes courts to provide injunctive relief to insurers and certain other non-debtors in narrow circumstances where, as in Manville, the non-debtors share an identity of interest with the debtor. Specifically, the statute permits such relief only for third parties who are "alleged to be directly or indirectly liable for the conduct of, claims against, or demands *on the debtor*"—not for third parties facing claims arising out of their own allegedly tortious con-

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[8] The Sixth Circuit further required that the plan provide "a mechanism to pay for all, or substantially all, of the class or classes affected by the injunction" as well as "an opportunity for those claimants who choose not to settle to recover in full." *Id.*

duct. 11 U.S.C. § 524(g)(4)(A)(ii) (emphasis added). Moreover, the statute permits such an injunction only "*to the extent* such alleged [third-party] liability … arises by reason of" one of four specified relationships with the debtor (including issuance of insurance to the debtor). *Id.* (emphasis added).[9]

Section 524(g) thus limits non-debtor injunctions to "derivative liability for the claims against the debtor." *In re Combustion Eng'g*, 391 F.3d 190, 234 (3d Cir. 2004). "As both the plain language of the statute and its legislative history make clear, § 524(g) provides no specific authority to extend a channeling injunction to include third-party actions against non-debtors where the liability alleged is not derivative of the debtor." *Id.* at 236. As the Court of Appeals here recognized (Pet. App. 34a-35a), the specific limitations Congress imposed on the issuance of non-debtor injunctions in Section 524(g)—limitations that derive from the fundamental structure and purposes of bankruptcy law—confirm that bankruptcy courts' interstitial power to issue such injunctions under Section 105 must be similarly constrained.

Indeed, that was the ultimate holding of *Combustion Engineering*, an asbestos-related bankruptcy in which the Third Circuit addressed a situation closely analogous to this case. There, two non-debtor affiliates of the debtor sought a permanent injunction of asbestos-related

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[9] The reward for insurers that satisfy Section 524(g)'s requirements is substantial. Although limited, as it must be, to debtor-derived liabilities, insurers enjoy the protection of a robust injunction prohibiting the pursuit of such claims, both present and future, against them.

claims against them arising out of their own independent tortious conduct, unrelated to the debtor's asbestos liability. The bankruptcy court held the injunction impermissible under Section 524(g), but concluded that it was necessary and appropriate under Section 105 because the corporate parent of the debtor and the affiliates had conditioned its substantial contribution to the asbestos trust on obtaining such relief. *Combustion Eng'g*, 391 F.3d at 210.

The Third Circuit flatly rejected this attempted end-run around the strictures of Section 524(g) and held that the bankruptcy court had no power to enjoin third-party claims against the non-debtor affiliates in the absence of any identity of interests between the debtor and the non-debtors. Because the complaints against the non-debtors "alleg[ed] independent liability, wholly separate from any liability involving [the debtor]," neither Section 524(g) nor Section 105 provided any authority for the injunction. *Combustion Eng'g*, 391 F.3d at 202, 235. As the Third Circuit explained, "[a]lthough some asbestos claimants … may benefit from an augmented fund [contributed by the non-debtors], equity does not permit non-debtor affiliated entities to secure the benefits of Chapter 11 in contravention" of the Bankruptcy Code. *Id.* at 237. "[T]he practical effect of the § 105(a) injunction here is to extend bankruptcy relief to two non-debtor companies outside of bankruptcy," impermissibly allowing them "to cleanse themselves of non-derivative asbestos liability without enduring the rigors of bankruptcy." *Id.*

The Court of Appeals' decision here was nothing more than the unexceptional application of the same well-settled principles first articulated in *Johns-Manville*

itself, reaffirmed in the line of cases culminating in *Dow Corning* and *Combustion Engineering*, and codified in Section 524(g). As noted above, the Court of Appeals expressly reaffirmed its 1988 decision that the bankruptcy court had the power to enjoin claims against Manville's insurers that derived from Manville's conduct. Pet. App. 30a-31a. Here, by contrast, Travelers sought to enjoin claims against it that, whatever their ultimate merit, did not seek to hold Travelers derivatively liable for Manville's tortious conduct. Rather, as the Court of Appeals explained, at least some subset of the Independent Actions "seek to recover directly from [Travelers] for the insurer's own independent wrongdoing. Plaintiffs aim to pursue the assets of Travelers. They raise no claim against Manville's insurance coverage. They make no claim against an asset of the bankruptcy estate, nor do their actions affect the estate." Pet. App. 29a. Under established principles governing non-debtor injunctions, such claims—running between two non-debtors and having no effect on the bankruptcy estate—fall outside the bankruptcy court's power to enjoin. [10]

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[10] The Court of Appeals noted both that the claims against Travelers did not seek to recover from the *res* (the insurance policies and insurance settlement proceeds) and that they did not derive from Manville's conduct. In the insurance context, those two articulations of the limit on non-debtor injunctions are essentially synonymous. A typical general liability policy provides that the insurer will indemnify its insured for the insured's liability. An insurer's liability arising under its insurance policy thus derives from the debtor's liability. By contrast, insofar as an insurer allegedly breaches an independent duty running directly to a claimant, such a claim neither derives from the debtor's liability nor seeks to recover from the *res*.

Indeed, this case illustrates the dangers of non-debtor injunctions against which courts have repeatedly cautioned. "A nondebtor release is a device that lends itself to abuse. By it, a non-debtor can shield itself from liability to third parties. In form, it is a release; in effect, it may operate as a bankruptcy discharge arranged without a filing and without the safeguards of the Code." *Metromedia*, 416 F.3d at 142. The original 1986 injunction in favor of Manville and its insurers was approved by Manville's creditors—those claimants injured by Manville—after a proceeding designed to protect those creditors' interests. No protection at all, however, was afforded to creditors of *Travelers* whose claims derive from Travelers' alleged independent tortious conduct—such as a claimant who was not exposed to a Manville product, but who claims that Travelers' breach of its state-law duties led her to accept an inadequate settlement from another asbestos defendant such as Combustion Engineering. Travelers did not comply with any of the stringent requirements and creditor protections the Bankruptcy Code imposes on debtors. Nor did it submit its business and assets to the *in rem* jurisdiction of the Bankruptcy Court that is the predicate for the discharge of claims against a debtor. *See Hood*, 541 U.S. at 447.

Similar concerns drove this Court's holding in *Ortiz* v. *Fibreboard Corp.*, 527 U.S. 815 (1999). There, this Court disapproved a purported "limited fund" class-action settlement of asbestos claims under Federal Rule of Civil Procedure 23(b)(1)(B) because the settlement's proponents had failed to demonstrate that the fund available to pay the claims was truly limited. *See id.* at 848-853. *Ortiz* explained that the justification for binding absent plaintiffs to a limited-fund class-action settle-

ment—like the justification for binding creditors to a plan of reorganization—is that the total assets available to satisfy claims are limited, and it is necessary for one court to resolve all the claims to the fund in order to ensure its equitable distribution to claimants. *See id.* at 834-841. Where that necessity is not shown, absent claimants may not properly be bound. So too here: while Manville's present and future creditors could be bound to the Manville plan by virtue of the bankruptcy court's power to marshal Manville's limited assets and adjudicate all claims to those assets, that power cannot justify enjoining the assertion of claims against a *non-debtor* that would have no effect on the Manville estate.[11]

C. None Of Petitioners' Arguments Regarding The Scope Of The Bankruptcy Court's Jurisdiction Or Power Provides A Basis For Reversal

Petitioners' contrary arguments both distort the Court of Appeals' actual holding and fail to engage the established body of law set out above. Indeed, while criticizing the Court of Appeals' analysis, Travelers conspicuously fails to offer any legal principle at all by

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[11] The representational problems criticized by the Court from *Hansberry v. Lee*, 311 U.S. 32 (1940), to *Ortiz*, namely allowing present claimants to advantage themselves by trading away the rights of absent claimants whose interests they cannot be said to fairly represent, also are present here. As noted above, the main purpose of the 2004 "clarifying" order was not to bind the current claimants, who had already agreed to settle, concede their violations, and release their claims, in return for a substantial settlement, but rather to seek to bind absent claimants.

which to ascertain the scope of the bankruptcy courts' power to enjoin claims against non-debtors. None of its contentions (nor those of Common Law Settlement Counsel) provides any basis for questioning the Court of Appeals' judgment.

1. Travelers' primary argument for reversal is its contention that bankruptcy courts' subject-matter jurisdiction extends beyond "simple adjudications of rights in the *res*" to the issuance of "ancillary orders enforcing their *in rem* adjudications." Br. 23 (quoting *Katz*, 546 U.S. at 370). That is true, but irrelevant.

As discussed above, bankruptcy courts' jurisdiction "is principally *in rem* jurisdiction," and centers on the traditional bankruptcy purpose of protecting estate property and adjudicating competing claims to the *res*. *Katz*, 546 U.S. at 369; *Hood*, 541 U.S. at 448. In addition, as this Court recognized in *Katz*, bankruptcy jurisdiction may extend to certain ancillary disputes that go beyond the *res* itself, but that affect the overall debtor-creditor relationship. 546 U.S. at 370.

But that uncontroversial proposition sheds no light on the question presented here, which is the scope of the bankruptcy court's power to enjoin claims against *non-debtors*. The Court of Appeals did not hold that bankruptcy jurisdiction is solely *in rem*. Rather, it held that "a bankruptcy court only has jurisdiction to enjoin third-party non-debtor claims that directly affect the *res* of the bankruptcy estate." Pet. App. 31a. As demonstrated above, a well-established body of caselaw supports the conclusion that a bankruptcy court lacks the power to enjoin third-party claims against non-debtors that do not assert liability derivative of the debtor's and thus do not affect the *res* of the bankruptcy estate. Moreover, that

conclusion flows logically from the nature of bankruptcy itself: because bankruptcy is about debtors and their property, bankruptcy courts may not enjoin claims against non-debtors unless assertion of those claims would have some effect on the debtor's property.

Indeed, the language of the Bankruptcy Code mandates this conclusion. Contrary to Travelers' suggestion (Br. 24-25), bankruptcy courts are not free to take any action they deem to be in furtherance of equity. "[W]hatever equitable powers remain in the bankruptcy courts must and can only be exercised within the confines of the Bankruptcy Code." *Norwest Bank Worthington* v. *Ahlers*, 485 U.S. 197, 206 (1988). Any residual equitable powers the bankruptcy courts possess are codified in Section 105 of the Code. *See United States* v. *Energy Res. Co.*, 495 U.S. 545, 549 (1990); *In re Airadigm Commc'ns, Inc.*, 519 F.3d 640, 657 (7th Cir. 2008). And Section 105 is not a source of unbounded equitable authority to take any action the bankruptcy court deems desirable or to "create substantive rights that would otherwise be unavailable under the Bankruptcy Code." *Continental*, 203 F.3d at 211; *accord Metromedia*, 416 F.3d at 142. Rather, the power it grants is limited to actions that "carry out" and effectuate the specific "provisions" of the Bankruptcy Code, and thus "must derive ultimately from some other provision of the … Code." *Metromedia*, 416 F.3d at 142 (quoting Baird, *Elements of Bankruptcy* 6 (3d ed. 2001)). Where an injunction does not further any specific provision of the Bankruptcy Code—and Travelers points to no such provision here—it is not authorized by Section 105.

Common Law Settlement Counsel assert a related, but distinct, objection to the Court of Appeals' analysis.

Notably, they do not argue that Section 105 permits a bankruptcy court to enjoin claims against non-debtors that do not affect the bankruptcy estate. Indeed, they approvingly cite (Br. 20) the seven-part test established by the *Dow Corning* decision—a test under which there can be no doubt that the injunction here would be impermissible. Instead, they merely contend that the Court of Appeals erred in framing its holding in terms of subject-matter jurisdiction, arguing that the question is more properly viewed as the scope of the bankruptcy court's statutory authority under Section 105.

That objection is semantic, not substantive. As this Court has observed, "jurisdiction is a word of many, perhaps too many, meanings." *Arbaugh* v. *Y&H Corp.*, 546 U.S. 500, 510 (2006). The correctness of the Court of Appeals' judgment does not turn on whether its opinion used the term "jurisdiction" or "authority," but on whether bankruptcy courts have the power to issue injunctions like the one sought here. As demonstrated above, they do not.

In any event, whether or not the Court of Appeals was strictly correct in framing the issue in terms of subject-matter jurisdiction, it was unquestionably correct to inquire into the limits of the bankruptcy courts' subject-matter jurisdiction in analyzing whether the court had the power to enjoin claims against non-debtors.

It is undisputed that bankruptcy courts lack subject-matter jurisdiction to adjudicate claims between non-debtors—like the claims against Travelers at issue here—that do not affect the bankruptcy estate. Bankruptcy courts possess "original but not exclusive jurisdiction of all civil proceedings arising under title 11, or arising in or related to cases under title 11." 28 U.S.C. §

1334(b). That grant of jurisdiction is undeniably broad. But that broad jurisdiction is confined to issues affecting the debtor and its estate. It does *not* extend to the adjudication of disputes between non-debtors that would not "have an effect on the bankruptcy estate." *Celotex Corp.* v. *Edwards*, 514 U.S. 300, 308 n.5 (1995); *see Pacor, Inc.* v. *Higgins*, 743 F.2d 984, 994 (3d Cir. 1984).

The scope of the authority granted by the Bankruptcy Code to enjoin non-debtor claims must be informed by the limitations on the bankruptcy court's jurisdiction to adjudicate those same claims. Permitting bankruptcy courts to permanently enjoin claims that they had no jurisdiction to adjudicate would facilitate an end-run around the limitations Congress set on bankruptcy courts' jurisdiction. Accordingly, in determining the permissibility of non-debtor injunctions, various other courts, like the Court of Appeals here, have examined the scope of the "related to" jurisdiction to inform that inquiry and have concluded that a bankruptcy court may not enjoin claims falling outside that jurisdiction. *See Combustion Eng'g*, 391 F.3d at 224-233; *In re Zale Corp.*, 62 F.3d 746, 751-757 (5th Cir. 1995).

Petitioners' jurisdictional arguments—even if correct—thus provide no basis for reversing the Court of Appeals' judgment.

2. Travelers next contends (Br. 28-33) that the ability to enter non-debtor injunctions is critical to complex reorganizations such as mass-tort cases, and that the Court of Appeals' decision would unduly hinder such reorganizations. In support of that contention, it relies on three cases: *Drexel, A.H. Robins*, and *Dow Corning.* According to Travelers (Br. 32), "[n]one of the compre-

hensive reorganizations in these multi-faceted cases could have occurred under the Second Circuit's unprecedented theory of bankruptcy court jurisdiction."

As even a cursory examination of these cases makes clear, that is incorrect. As discussed above, in each of these three cases, the non-debtor injunction served to protect parties who were allegedly liable for claims against the debtor, so that a claim against the non-debtor would give rise to an indemnity or contribution claim that could deplete the debtor's estate. In *Drexel*, the non-debtor injunction protected the bankruptcy "estates from piecemeal dismemberment through ... indemnity claims" by the directors and officers. 130 B.R. at 928. In *A.H. Robins*, the Fourth Circuit approved the injunction because "the entire reorganization hinge[d] on the debtor being free from indirect claims such as suits against [the non-debtors protected by the injunction] who would have indemnity or contribution claims against the debtor." 880 F.2d at 702. And in *Dow Corning*, the Sixth Circuit held that non-debtor injunctions are *never* permissible unless there is "an identity of interests between the debtor and the third party, usually an indemnity relationship, such that a suit against the non-debtor is, in essence, a suit against the debtor or will deplete the assets of the estate," and the reorganization "hinges on the debtor being free" from such indemnity or contribution claims. 280 F.3d at 658.

Far from demonstrating any flaws in reasoning, these decisions confirm that the Court of Appeals' holding was correct. As the Court of Appeals noted, "Travelers candidly admits" that the Independent Actions "seek damages from Travelers" that are "*unrelated* to the policy proceeds" that are estate assets, and "do not

seek to collect on the basis of Manville's conduct." Pet. App. 23a. The Independent Actions involve no "identity of interests" between Manville and Travelers and can have no effect on the Manville estate. There is accordingly no support for the injunction Travelers seeks in the decisions on which it relies.[12] Nor would application of the Court of Appeals' rule—which, in accord with basic bankruptcy principles, simply limits the scope of non-debtor relief to liability that is derivative of the deb-

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[12] The other cases cited by Travelers in the margin (Br. 32 n.7) likewise offer no support for the injunction entered here. In *Airadigm*, the Seventh Circuit agreed with the Court of Appeals here that a non-debtor release is not appropriate if it "affect[s] matters beyond the jurisdiction of the bankruptcy court or unrelated to the reorganization itself." *Airadigm*, 519 F.3d at 657 (citing *Johns-Manville Corp.*, 517 F.3d 52 (2d Cir. 2008)). In *Munford*, the Eleventh Circuit approved a settlement, outside the plan context, of the debtor's tort claims against a non-debtor defendant, which included a bar order enjoining non-settling co-defendants from asserting contribution or indemnity claims against the settling defendant. *In re Munford, Inc.*, 97 F.3d 449, 452, 455 (11th Cir. 1996). While the court mentioned Section 105, it relied principally on non-bankruptcy case law approving the limited use of such bar orders under Federal Rules of Civil Procedure 16 and 23. *See Munford*, 97 F.3d at 455 (citing *In re U.S. Oil & Gas Litig.*, 967 F.2d 489, 493-494 (11th Cir. 1992)); *cf. U.S. Oil & Gas*, 967 F.2d at 496 n.5 (noting that "a settlement bar order cannot extinguish" "truly independent claims" against a non-settling defendant). Finally, *G.S.F.* involved a *consensual* release of a claim in a valid settlement between two non-debtors; the First Circuit there merely held that the bankruptcy court had "related to" jurisdiction to approve the settlement because the non-debtor defendant had asserted an indemnity claim against the debtor that could affect the estate. *In re G.S.F. Corp.*, 938 F.2d 1467, 1476, 1478-1479 (1st Cir. 1991).

tor's and can thus affect the estate—hinder complex reorganizations.

3. Finally, Travelers contends (Br. 34-36) that the Court of Appeals erroneously viewed the *res* of the bankruptcy estate as the dollar limits of the insurance policies, "draw[ing] a distinction between this res, on the one hand, and every other incident and component of the ... contractual ties between Travelers and Manville" on the other. Travelers argues that its contractual duty to defend Manville under the policies should also be viewed as part of the bankruptcy estate. And it appears to suggest that because the Independent Actions seek to hold Travelers liable for its conduct while defending Manville, they are therefore properly enjoined.

This argument suffers from two flaws. First, it misapprehends the reasoning of the Court of Appeals. When it referred to "policy proceeds," the Court of Appeals referred not only to the dollar limits of the policies, but to all of the insurance settlement proceeds that Manville received in exchange for releasing its contractual rights under the policies. The court did not draw a distinction between Manville's policy limits and its other rights under its insurance policies, or suggest that Manville's contractual right to have Travelers defend the suits against it was not part of the bankruptcy estate. Rather, the critical distinction the Court of Appeals properly drew was between claims alleging derivative liability—those that "seek to collect on the basis of Manville's conduct," "seek to recover insurance proceeds" or "rely on the insurance policies for recovery," Pet. App. 23a—and claims alleging breach of a purported "duty to the [Independent] Action Plaintiffs independent of [Travelers'] contractual obligations to

indemnify those injured by the tortious conduct of Manville," which seek to "recover directly from a debtor's insurer for the insurer's own independent wrongdoing." *Id.* 29a, 32a.

Second, as the Court of Appeals correctly held, even assuming the validity of all the bankruptcy court's factual findings in this regard, a mere factual nexus between the Independent Actions and Traveler's insurance relationship with Manville is insufficient to support the injunction. Rather, for the reasons discussed above, the relevant question is whether the Independent Actions are, in essence, suits against Manville or would otherwise deplete the Manville estate. The answer to that question, in turn, hinges not on whether the Independent Actions are based on facts involving Manville, but on whether as a legal matter Travelers' liability is derivative of Manville's. *Cf. Pacor*, 743 F.2d at 994 ("the mere fact that there may be common issues of fact between a civil proceeding and a controversy involving the bankruptcy estate" does not establish a relationship to the bankruptcy estate sufficient to give rise to bankruptcy jurisdiction).

Finally, it bears emphasis that, contrary to the implication of Travelers' brief, the Court of Appeals did not resolve the question whether any particular lawsuit among the Independent Actions could properly be enjoined. Rather, it merely articulated the proper legal test and remanded to the bankruptcy court "to examine whether" under that test, "it had jurisdiction to enjoin any of the instant claims." Pet. App. 36a. Accordingly, this Court may decline Travelers' invitation to engage in an exhaustive review of the facts underlying any particular complaint to determine whether it is properly en-

joined. Rather, this Court may limit its review to determining whether the rule of law announced by the Court of Appeals is correct, leaving application of the rule to the bankruptcy court in the first instance.

II. THE COURT OF APPEALS' DECISION IS FULLY CONSISTENT WITH THE SUPREMACY CLAUSE

Travelers' contention (Br. 40) that the Court of Appeals' decision violates the Supremacy Clause stems from its misapprehension of the court's holding and reasoning. When that misreading is corrected, Travelers' Supremacy Clause argument is revealed as wholly insubstantial.

Travelers contends (Br. 39) that the Court of Appeals erred by "holding that a final *federal* order can be circumvented because state law—not the federal court—determines the scope of the federal order." It similarly alleges (Br. 40) that the Court of Appeals "refused to enforce the injunction by its terms because (in the Second Circuit's view) enforcement 'risks … displacing state courts.'" That description distorts the Court of Appeals' decision beyond recognition.

The Court of Appeals nowhere held that state law "determines the scope of [a] federal order." Rather, its decision rested on the unquestioned—and unquestionably correct—premise that *federal* law governs the nature and extent of the bankruptcy court's power to enjoin claims against a non-debtor. The Court of Appeals framed the issue as whether bankruptcy courts have the authority "to enjoin third-party non-debtor claims that [do not] directly affect the *res* of the bankruptcy estate" and do not derive from the conduct of the debtor. Pet. App. 31a; *see id.* 23a. In answering that question, the

court engaged in a lengthy analysis of federal bankruptcy law—including its prior decision in *MacArthur*, other courts of appeals' decisions addressing similar questions, and Section 524(g) of the Bankruptcy Code. *Id.* 21a-35a.

State law came into play in the Court of Appeals' analysis only because the Independent Actions that Travelers sought to have enjoined were *state-law* claims. Accordingly, as the Court of Appeals explained, it was necessary to look to state law in order to determine the nature of the claims.

That analysis in no way permits state law to trump federal bankruptcy law. It simply recognizes that state law supplies the legal rules governing state-law tort and consumer-protection actions. And the nature of those actions, in turn, determines whether a bankruptcy court may take the extraordinary step of enjoining them when they are asserted against a non-debtor. As the Court of Appeals explained, where state-law suits seek to hold a non-debtor liable for the debtor's actions, the bankruptcy court may do so in appropriate circumstances. Where, by contrast, such suits seek to hold a non-debtor liable for its own independent tortious conduct, the bankruptcy court may not enjoin them. That limitation on the scope of the bankruptcy court's authority is a rule of *federal* law.

That this analysis gives state law a limited role to play is entirely unremarkable. Notwithstanding Congress's plenary power over the area of bankruptcy, decades ago this Court held unanimously that "[p]roperty interests are created and defined by state law," and thus in a bankruptcy case it is state law that determines whether a creditor has a valid claim on assets of the es-

tate. *Butner* v. *United States*, 440 U.S. 48, 55 (1979). "[T]he 'basic federal rule in bankruptcy is that state law governs the substance of claims, Congress having generally left the determination of property rights in the assets of a bankrupt's estate to state law.'" *Travelers Cas. & Sur. Co. of Am.* v. *PG&E*, 549 U.S. 443, 450-451 (2007) (quoting *Raleigh* v. *Ill. Dep't of Revenue*, 530 U.S. 15, 20 (2000)) (other internal quotation marks omitted); *see also Vanston Bondholders Protective Comm.* v. *Green*, 329 U.S. 156, 161 (1946) ("What claims of creditors are valid and subsisting obligations against the bankrupt ... is a question which, in the absence of overruling federal law, is to be determined by reference to state law."). Particularly where, as here, the alleged property in question is a chose in action, reference to state or other applicable nonbankruptcy law is essential to understanding the contours of the rights at issue. The Court of Appeals' analysis here was a straightforward application of this basic bankruptcy principle, and it no more permits "Congress's constitutional authority ... [to] be overridden by state law" (Travelers Br. 40) than did this Court's ruling in *Butner* or any of the other cases cited above.

None of the three cases on which Travelers relies (Br. 40-42) calls into question the settled, commonsense principle that state law establishes the nature and validity of state-law claims adjudicated or otherwise affected in a bankruptcy case. Instead, each simply reaffirms the obvious proposition that federal law trumps state law in cases of actual conflict—a proposition that has no bearing here because there is no such conflict. In *Perez* v. *Campbell*, 402 U.S. 637 (1971), for example, an Arizona statute provided that even if an individual

received a discharge in bankruptcy, he or she could be penalized for not paying a debt that stemmed from an automobile accident. That law, this Court rightly concluded, conflicted with Congress's determination regarding the effect of a discharge in bankruptcy, and therefore had to yield. *Local Loan Co.* v. *Hunt*, 292 U.S. 234 (1934), is similar. There, this Court held that a debtor's assignment of his future wages to a creditor could not be enforced against him following his discharge in bankruptcy, notwithstanding Illinois law purporting to provide that an assignment of future wages is valid even after a discharge. *Id.* at 243-244.[13]

Here, by contrast, the state laws at issue merely establish the elements of the causes of action brought by the Independent Action plaintiffs. They do not purport to—nor do they in fact—conflict with any provision of federal law. And while the nature of the state-law claims is a question of state law, whether they may be enjoined is, as the Court of Appeals recognized, a question of federal law. The Court of Appeals' analysis—far from imposing "a newly-announced limitation on the application of the Supremacy Clause" (Travelers Br. 40)—thus breaks no new ground at all. It is entirely consistent with established principles of bankruptcy and with federal supremacy.

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[13] *Hanover National Bank* v. *Moyses*, 186 U.S. 181 (1902), likewise merely held that Congress may constitutionally provide for the discharge of state-law debt. That proposition—uncontroversial for at least the last century—has no bearing on any issue presented by this case.

III. THE COURT OF APPEALS' REVIEW, ON DIRECT APPEAL, OF THE 2004 CLARIFICATION ORDER RAISES NO ISSUE OF FINALITY

Finally, petitioners argue that the Court of Appeals' decision undermines principles of finality and creates uncertainty in other cases involving similar confirmation orders or settlements. Travelers Br. 43-51; CLSC Br. 23-25. Like petitioners' Supremacy Clause argument, this argument rests on a false premise. Travelers accuses the Court of Appeals of "approaching the case as though it were a direct appeal of the 1986 confirmation order, ... discard[ing] its own decades-old affirmance of the Manville confirmation order" (Br. 5), and "rewriting the Manville confirmation order retroactively to give enterprising plaintiffs' lawyers an 'end run' around its core provision" (Br. 44). That is simply not so.

Far from "discarding" its previous decisions upholding the 1986 confirmation order and insurance injunction, the Court of Appeals expressly reaffirmed those decisions—but declined to extend them in the unprecedented way Travelers sought. Embracing the holding of its 1988 *MacArthur* decision, the Court of Appeals explained that "the bankruptcy court had jurisdiction and authority to enter the 1986 orders barring claims 'based upon, arising out of or related to the Policies.'" Pet. App. 30a-31a (citation omitted). And, as discussed above, the Court of Appeals reaffirmed *MacArthur*'s rationale for this conclusion: such an injunction was necessary to protect the insurance policies and proceeds that were valuable estate assets. The court thus in no way "discarded" its previous affirmance of the 1986 orders.

Indeed, the Court of Appeals was not reviewing the 1986 orders at all. Rather, it was reviewing the bankruptcy court's 2004 order approving the settlement agreements, in which Travelers paid $500 million in return for an order "clarifying" that the Independent Actions were barred by the 1986 injunctions. As the Court of Appeals explained, it was not the 1986 orders but the 2004 order that exceeded the scope of the bankruptcy court's authority: while "the bankruptcy court had jurisdiction and authority to enter the 1986 orders barring claims 'based upon, arising out of or related to the Policies,' it erred by subsequently interpreting those terms without reference to the court's jurisdictional limits." Pet. App. 30a-31a (citation omitted). That is, the bankruptcy court—in the guise of a "clarification"—improperly expanded the 1986 injunction to bar claims that the bankruptcy court could not lawfully enjoin.

Respondents thus did not bring a "collateral attack" on the 1986 orders, as petitioners claim. *E.g.*, Travelers' Br. 44. What respondents argued, and what the Court of Appeals held, is that the bankruptcy court improperly rewrote the confirmation order by extending the injunction to reach claims that it could not lawfully encompass. That order did not issue until 2004, and the Court of Appeals' decision was made on respondents' timely direct appeal from it. There is thus nothing "collateral" or belated about respondents' "attack."[14]

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[14] Indeed, petitioners' "collateral attack" argument is a brash rewriting of the history of this case. It was, after all, Travelers, not respondents, who initiated these proceedings in the bankruptcy court in 2002, creatively pointing to the Manville injunction as a defense to state-law suits seeking to hold it liable for its own al-

Petitioners cannot avoid this reality by saying that the bankruptcy court was merely enforcing and interpreting the 1986 orders. An interpretation of a prior order is a new legal ruling, and such a ruling is subject to review on direct appeal just like any other, irrespective of the age or "finality" of the earlier order. Were it otherwise, any time an order became final the issuing judge would be free, in the guise of "clarification," to revise it however he or she saw fit; any effort to oppose such revisions, no matter how belated or improper they were, would be deemed an impermissible "collateral attack." That is untenable. *See Louisiana Pub. Serv. Comm'n* v. *FERC*, 482 F.3d 510, 517 (D.C. Cir. 2007) ("If review were unavailable in these circumstances, then an 'agency [could] enter an ambiguous or obscure order, wilfully or otherwise, wait out the required time, then enter an "explanatory" order that would extinguish the review rights of parties prejudicially affected.'" (alteration in original) (citation omitted)).

Correcting petitioners' mischaracterization of the Court of Appeals' holding also makes clear that their supporting caselaw is inapposite. For example, Travelers (Br. 44-45) cites *Chicot County Drainage District* v. *Baxter State Bank*, 308 U.S. 371 (1940), in which a party argued that an earlier judicial decree was entirely invalid. Because that argument necessarily called into

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leged torts. And it was petitioners, not respondents, who later moved the bankruptcy court, as part of a $500 million settlement, to "clarify"—i.e., rewrite—the confirmation order so as to bar all of the Independent Actions and related indemnity/contribution claims (in an effort to bind absent and future claimants). Respondents simply opposed these improper efforts.

question the prior decree, which became final after not being appealed, this Court rejected the argument on the strength of *res judicata*. *See id.* at 375. Here, by contrast, there is no attack on the confirmation order itself, the analogue to the decree in *Chicot County*. Respondents, again, challenge only the clarification order's expansion of the injunction's scope, an expansion that was not previously approved by any court and is still on direct appeal. Likewise inapt is *Stoll* v. *Gottlieb*, 305 U.S. 165 (1938), in which this Court held that *res judicata* prohibited state courts from relitigating a jurisdictional question previously decided by a federal court, *see id.* at 171-172; *see also id.* at 172 (describing "a collateral attack" as one that "retries the issue previously determined"). The pertinent issue here—the validity of the 2004 clarification order—has not previously been litigated.

Yet another argument that crumbles once petitioners' false premise is recognized is that the Court of Appeals' decision here is in tension with 11 U.S.C. § 524(g)(3)(A)(i), which provides that channeling injunctions meeting certain conditions "may not be revoked or modified by any court except through appeal." Once again, respondents have not challenged the injunction itself, and the Court of Appeals neither "revoked [n]or modified" it. (Indeed, in respondents' view it was the bankruptcy court that did so in the "clarification" order.)

Travelers' assertion that the Court of Appeals' decision unfairly undermines injunctive protections on which it reasonably relied is equally unsound. Travelers claims to have assumed that the 1986 injunction would protect it from suits that seek to hold it liable not for

Manville's conduct, but for its own allegedly tortious actions, and that do not seek to recover from the assets of the bankruptcy estate. Travelers contends that it would not have agreed to the 1986 settlement had it known then that the injunction would not bar such claims. But that assertion is refuted by the record. As discussed above, Travelers expressly agreed and represented to the bankruptcy court in 1985 that "the injunction is intended only to restrain claims against the *res* (i.e., the Policies) which are or may be asserted against the Settling Insurers." 2d Cir. App. A-1118; *see supra* pp. 5-6. Indeed, if Travelers had always believed that the Independent Actions were barred by the 1986 injunction (entered as part of a settlement in which Travelers paid $80 million), it is curious that Travelers was willing to pay an additional $500 million to have the bankruptcy court "clarify" that the 1986 injunction covered such claims.

There is likewise no merit to Travelers' argument (Br. 49) that the Court of Appeals' decision upsets broader "societal reliance" on the Manville insurance injunction. Travelers appears to contend that parties in other cases have agreed to comparable settlements only because they assumed that the Manville injunction, and subsequent injunctions entered on that model, immunized non-debtors from their own independent tortious conduct. To the extent any party indeed made such an assumption, it had no foundation in the relevant decisions—including the Court of Appeals' 1988 decision in *Johns-Manville* itself. As to Travelers' related assertion (Br. 48) that the Court of Appeals' decision here imperils the finality of other settlements, that argument fails because it is based on the false premise that the Court of

Appeals invalidated or altered the confirmation order. As discussed above, the Court of Appeals simply barred an improper expansion of the injunction's scope. Thus, the only message that parties to other settlements could properly take away from the court's decision is that they will be protected from similar belated rewritings of their injunctions.

Past settlements aside, Travelers argues (Br. 48) that going forward the Court of Appeals' decision would "drastically … reduce, if not eliminate," insurers' incentive to participate in such settlements, such that the creation of future Section 524(g) trusts will be more difficult. But Travelers never explains why insurers would not still be willing to enter into settlements in exchange for the protection that the Court of Appeals' decision here preserves for insurers, namely protection from liability based on their insurance policies or on the conduct of the insured. As Section 524(g) provides, bankruptcy courts can legitimately grant insurers and other third-party non-debtors injunctions barring actions against them that seek to hold them liable for the conduct of the debtor, to the extent that liability arises by reason of any of the statutorily enumerated relationships with the debtor. That there are limitations on the bankruptcy court's power to enjoin claims against third-party non-debtors does not mean that that power does not exist, that it is ineffective to facilitate reorganizations of asbestos defendants, or that it is insufficiently broad to induce

insurers to settle with such defendants.[15] The Court of Appeals' decision, which simply followed settled law in rejecting the extension of non-debtor injunctions to the non-debtor's own legally independent liability, in no way threatens existing trusts or the ability to resolve asbestos claims through such trusts in the future.

CONCLUSION

The judgment of the Court of Appeals should be affirmed.

Respectfully submitted.

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[15] In any event, if federal law does not give bankruptcy courts the power to enter injunctions like the one sought by Travelers, the fact that settlements may be more difficult as a result is irrelevant. Policy considerations cannot justify a judicial expansion of bankruptcy courts' authority beyond the limits Congress has set. *See, e.g.*, *Central Bank, N.A.* v. *First Interstate Bank, N.A.*, 511 U.S. 164, 188 (1994) ("Policy considerations cannot override our interpretation of the text and structure of the Act, except to the extent that they may help to show that adherence to the text and structure would lead to a result so bizarre that Congress could not have intended it." (internal quotation marks omitted)).